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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHELE MAZUR, On Behalf of Herself
and all Others Similarly Situated,

Plaintiff,

v.

EBAY INC., HOT JEWELRY
AUCTIONS.COM d/b/a JEWELRY
OVERSTOCK AUCTIONS, HOT
JEWELRY AUCTIONS.COM d/b/a
PARAMOUNT AUCTIONS, and DOES 1-
100, inclusive,

Defendants.

Case No. C07 3967 MHP

**DEFENDANT eBAY'S REPLY IN SUPPORT
OF ITS MOTION TO STAY ACTION
PENDING RESOLUTION OF THE
ARBITRATION BETWEEN PLAINTIFF
MAZUR AND DEFENDANT HJA**

Date: Mon. Jan. 14, 2007
Time: 2:00 p.m.
Judge: Hon. Marilyn H. Patel
Trial Date: Not yet set

I. INTRODUCTION

Plaintiff has failed to proffer any legitimate reason to deny Defendant eBay's motion to stay the action pending arbitration. In her opposition, Plaintiff attempts to obscure the relevant issues by devoting half the opposition to arguments concerning the validity of the arbitration clause and the specific procedures of the arbitration. These arguments are completely misplaced. eBay is not asking the Court to decide the validity of the arbitration clause between the Plaintiff and Hot Jewelry Auctions.com ("HJA"). Instead, we ask that if the court grant HJA's arbitration motion and stay request then the court extend the stay to include eBay. The only relevant issue is whether eBay as the non-arbitrating party is entitled to a stay pending arbitration under those circumstances. The answer is yes.

Plaintiff does not dispute the fact that this Court has the authority to stay this action. Nor does Plaintiff explain how she will be prejudiced by a temporary stay. Instead, she spends much of the opposition arguing a point upon which there is no disagreement: that the fundamental issue underlying eBay's alleged liability is whether or not HJA was involved in shill bidding. Plaintiff's opposition *supports* the argument that the Plaintiff cannot go forward with her claims against eBay without first proving her claims against HJA. Because Plaintiff's claims against the defendants are inherently inseparable, if the Court grants HJA's motion to stay, the stay should be extended to all claims against eBay as well.

II. PLAINTIFF'S CLAIMS AGAINST EBAY AND HJA ARE INHERENTLY INSEPARABLE.

When a litigation to be stayed pursuant to the Federal Arbitration Act involves additional defendants who are not parties to the arbitration, courts have repeatedly extended the stay as to the non-arbitrating defendants. Such a stay is granted when the claims against multiple defendants are inherently inseparable. Claims are inherently inseparable if (1) the claims against both defendants arise from the same operative facts; and (2) the non-arbitrating defendant's liability depends on the liability of the arbitrating defendant. *Harvey v. Joyce*, 199 F.3d. 790, 795-96 (5th Cir. 2000).

A. The Claims Against eBay And HJA Arise From The Same Operative Facts.

All of Plaintiff's claims stem from the allegation that she and members of the class used

1 eBay Live Auctions to purchase items from HJA at allegedly inflated prices. She alleges that
2 HJA inflated the prices through shill bidding. Therefore, the initial fact that Plaintiff will have to
3 prove for her claims against eBay and HJA are the same.

4 **B. Plaintiff's Claims Against eBay Are Entirely Derivative of Plaintiff's Claims**
5 **Against HJA.**

6 Contrary to her contention that her claims against eBay and HJA are not inherently
7 inseparable, Plaintiff's own opposition admits that one of "the fundamental issues involving
8 eBay's liability" is "whether or not there was shill bidding." (Opposition at 3.) Plaintiff will
9 necessarily have to prove HJA's liability for shill bidding before she can pursue her allegations
10 that eBay failed to prevent shill bidding and made misrepresentations about shill bidding. If
11 Plaintiff cannot prevail on her claims against HJA, then she will be unable to prevail against
12 eBay.

13 **III. DENYING A STAY WOULD PREJUDICE EBAY AND HJA.**

14 Plaintiff admits that the first step of her case against eBay is proving that HJA engaged in
15 shill bidding, yet, inexplicably, Plaintiff contends that a stay would not prejudice the parties.
16 Permitting a court of law to determine whether HJA engaged in shill bidding contemporaneously
17 to an arbitrator's determination of the same issue would create an end-run around the arbitration
18 agreement and would threaten inconsistent results. Moreover, it would force HJA to appear and
19 litigate this issue (despite an agreement to arbitrate which was designed to prevent exactly such a
20 scenario). Or worse, HJA could refuse to litigate the issue, and either Plaintiff would win this
21 issue by default, or eBay would be forced into the awkward position of defending an unrelated
22 company's actions as a precursor to its own defense. Courts have the inherent authority to grant
23 stays to prevent such injustices from occurring, and eBay respectfully requests the Court to
24 exercise that authority in the event that the Court grants HJA's motion to compel arbitration.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, in the event that HJA's arbitration motion is granted, eBay
3 respectfully requests that this Court enter an order staying the litigation of Plaintiff's claims
4 against eBay until after the arbitration between Plaintiff and HJA is resolved.

5 Dated: December 19, 2007

Respectfully submitted,

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10 /s/ Heather C. Meservy

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2007, I electronically filed the foregoing **DEFENDANT EBAY'S REPLY IN SUPPORT OF ITS MOTION TO STAY ACTION PENDING RESOLUTION OF THE ARBITRATION BETWEEN PLAINTIFF MAZUR AND DEFENDANT HJA** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record at the following listed email addresses.

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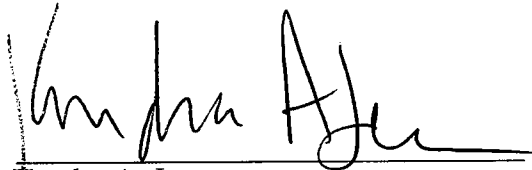
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I am personally and readily familiar with the business practice of Cooley Godward Kronish LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery on this 19th day of December, 2007.

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